IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.1036 of 2001

P.Durgaprasad .. Appellant

Vs.

The Corporation of Madras
rep. by its Commissioner
Rippon Buildings, Park Town P.O.,
Chennai - 600 003. .. Respondent

Appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 14.3.2001 made in W.P.No.12328 of 1994 presented under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus calling for the records of the respondent in WDC No. CE.368/92 dated 20.07.1993 and quahsh the same and consequently direct the respondent to sanction the plan Submitted to it for the proposed construction of flats at Survey No.14, Part and 5/2A Part, door No. III Main Road, West Shenoy Nagar Madras.-30.

For Appellant : Mr.A.Venkatesan
For Respondent : Mr.G.T.Subramanian

J U D G M E N T
(Delivered by P.D.DINAKARAN,J.)

Building permission for the proposed construction of residential flats in Survey No.14 (Part), Block No.10, Door No.6, II Main Road, West Shenoy Nagar, Chennai was refused by the Corporation by proceedings dated 20.7.1993 for the following reasons:

(i)The plot extent furnished by the appellant includes Corporation Land; and

(ii)The patta issued by the Tahsildar is not in order since Corporation Land is also included in the patta.

2. Challenging the said refusal of building permission, the appellant herein filed W.P.No.12328 of 1994 on the grounds that (i) the petitioner obtained necessary permission from the CMDA, (ii) the legal opinion dated

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22.2.1993 reveals him as the title holder of the property, and the appellant draws strength from the Sale deed dated 8.7.1953 from Mr.P.Vajravelu Mudaliar in favour of Polisetti Ramachandra Rao, and the Sale deed dated 17.4.1989 from Corporation of Madras in favour of the petitioner appellant and seven others.

3. The learned Single Judge, finding that the writ petition relates to the inter-se dispute between the parties, namely writ petitioner and the Corporation as to the very title of the property, dismissed the writ petition by order dated 14.3.2001 made in W.P.No.12328 of 1994. Hence, the writ appeal,.

4. Heard both sides.

5. The object of Article 226 is to provide a quick and inexpensive remedy to aggrieved parties. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petitions, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition, vide Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706.

6. Though the jurisdiction of the High Court under Article 226 of the Constitution is not confined to issuing the prerogative writs, there is a consensus of opinion that the High Court will not permit this extraordinary jurisdiction to be converted into a civil court under the ordinary law, vide Swetambar Sthanakwasi Jain Samiti v. Alleged Committee of Management Sri R.J.I. College, Agra, (1996) 3 SCC 11.

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7. It is now trite that ordinarily a writ court would not go into a disputed question of title, vide Antonio S.C. Pereira v. Ricardina Noronha,(2006) 7 SCC 740.

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In view of the well settled principles of law, we find no infirmity in the order of the learned Single Judge dated 14.3.2001 in W.P.No.12328 of 1994 dismissing the writ petition, as the title of the property itself is under dispute. This appeal is accordingly dismissed. No costs.

sasi

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Commissioner,
Corporation of Madras
Rippon Buildings, Park Town P.O.,
Chennai - 600 003.
+ One cc to Mr. A. Vankatesan, Advocate sR 26398
+ One cc to Mr. A. Mohammed Gouse, Standing Counsel for Corporation SR 26421
AKR (co)
sg 26/4/07

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